

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
The Development of Operational, Technical, and)	WT Docket No. 96-86
Spectrum Requirements for Meeting Federal, State)	
and Local Public Safety Agency Communications)	
Requirements Through the Year 2010)	
)	

COMMENTS OF USTELECOM—THE BROADBAND ASSOCIATION

I. Introduction

USTelecom – The Broadband Association¹ respectfully submits these comments in response to the National Telecommunications and Information Administration (NTIA)’s Petition for Rulemaking to update the rules and requirements for the Telecommunications Service Priority (TSP) system.² USTelecom members, many of which are legacy wireline providers, have a long history of participating in the TSP system and agree that as the rules move into their third decade, a refresh may be warranted to meet the needs of next-generation communications technology. While the Petition notes that “the changes detailed . . . are principally administrative in nature,”³ some of the changes would also have more substantive implications for communications providers. Should the Commission choose to pursue a rulemaking, USTelecom

¹USTelecom is the nation’s leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

² Petition for Rulemaking, NTIA, WT Docket No. 96-86 (filed July 17, 2019) (Petition). NTIA filed these comments on behalf of the Emergency Communications Division of the Department of Homeland Security (DHS).

³ *Id.* at 3.

offers feedback on how the Petition’s requests can better reflect the current communications landscape and avoid creating unintended and/or needlessly burdensome consequences.

II. DISCUSSION

A. New DIRS Reporting Requirements Should be Meaningful and Align with the Voluntary Nature of DIRS

The Commission should ensure any additional Disaster Information Reporting System (DIRS) reporting requirements are carefully tailored to produce relevant information and it should be mindful not to undermine the effectiveness of its voluntary DIRS program. The Petition broadly outlines that DHS seeks performance data that would allow it to evaluate the effectiveness of the TSP program by determining how quickly and efficiently TSP services were restored vis a vis other non-TSP circuits during a disaster (i.e., the situations in which DIRS would be activated).⁴ While the Petition states that DHS “plans to work with the Commission and service providers to determine the specific criteria for reporting and frequency,”⁵ and USTelecom would welcome the opportunity to engage directly with DHS about how to achieve its goals, all parties should be aware of what reported data would—and would not—reveal about the nature of restoring priority circuits.

In a disaster, service providers face a range of technical and physical issues of varying severity that affect their ability to restore service and, as a result, the actual time of restoration is not necessarily reflective of the priority given to restoring any particular circuit. Service providers take seriously their obligations under the TSP program, but if a TSP circuit requires a

⁴ FCC, Disaster Information Reporting System (DIRS), <https://www.fcc.gov/general/disaster-information-reporting-system-dirs-0> (last visited Aug. 30, 2019) (“DIRS is a voluntary, efficient, web-based system that communications companies . . . can use to report communications infrastructure status and situational awareness information during times of crisis. . . . The FCC determines whether to activate DIRS in conjunction with FEMA, and announces to participating providers via public notice or email the area that will be covered by the activation and specifics about requested submissions.”).

⁵ Petition at 4.

significantly more difficult operation to repair, then restoration may take longer to accomplish than other simultaneous non-TSP restorations in the affected area even though the TSP circuit is prioritized. Further, to the extent that fiber cuts are a frequent cause of service outages during disaster situations,⁶ restoring that fiber will likely revive service to a number of circuits simultaneously—both TSP and non-TSP. As such, the time of restoration of TSP and non-TSP circuits would be statistically the same even though only some are priority circuits. Accordingly, the Commission and DHS should understand that mere statistical comparisons of restoration time will in many instances not tell a complete picture of the prioritization or restoration activities in a disaster scenario and thus not accomplish DHS’s stated goal. Any future action by the Commission should clearly explain how these reporting metrics would be used and what data comparisons would be made.

Further, to the extent that the Commission or DHS seeks to use this information to highlight non-performance, the Commission should be mindful to not undermine the voluntary nature of DIRS—which has served its function well without creating an environment of unnecessary burdens in an emergency context—by expanding its scope or providing disincentives for reporting. Under the Petition’s revised Appendix A, which presents DHS’s proposal for a new rule structure in Part 64, providers would be required to “[p]rovide [DHS] the performance data necessary to assess TSP effectiveness” and “[s]ervice vendors will provide DHS data related to the provisioning and restoration times for areas covered by the activation of [DIRS].”⁷ First, this information would supplement what is currently reported under DIRS,

⁶ See, e.g., Report and Recommendations, PS Docket No. 18-339, October 2018 Hurricane Michael’s Impact on Communications: Preparation, Effect, and Recovery, (PSHSB 2019), at 11-12 <https://docs.fcc.gov/public/attachments/DOC-357387A1.pdf>.

⁷ Petition Appendix A at 9.

which includes “the status of . . . communications equipment, restoration efforts, power . . . and access to fuel.”⁸ The information DHS proposes to collect and use regarding specific circuit restoration timing would expand the scope of information providers report into DIRS—it is not a simple matter of pulling data that is already submitted. Also, such a rule would create the odd situation of mandatory reporting based on participation in a voluntary program. In this circumstance, could a provider avoid a reporting obligation simply by declining to participate in DIRS reporting? The Commission should be mindful to avoid creating disincentives for voluntary participation.

B. The Commission Should Avoid Adding Sweeping Subjective Language to Rules Governing a Highly Variable Disaster Context

The Petition asks the Commission to amend the current rules in order to add restoration process certainty, but its proposed language is both overly broad and subjective; should the Commission pursue a rulemaking along the lines proposed by the Petition it should carefully evaluate how to best effectuate this goal. The Petition seeks to “alter the varying and ambiguous language . . . used to specify the time frames within which TSP providers must provision and restore TSP-subject facilities” because “[t]he imprecision in the current rules concerning those timeframes has created confusion, disagreements, dissatisfaction and unrealistic expectations. . . .”⁹ The Petition seeks to remedy this issue via two primary methods: (1) inserting the word “promptly” in the rules and also adding the phrase “all resources.”¹⁰ Both of these insertions risk adding further uncertainty to the restoration process.

⁸ *The FCC’s Public Safety and Homeland Security Bureau Launches Disaster Information Reporting System (DIRS)*, Public Notice, 22 FCC Rcd 16757 (PSHSB 2007).

⁹ Petition at 5.

¹⁰ *Id.* at 5-6.

Any rule changes should recognize that the scope of restoration is contextual and must be based on a scale of reasonableness, taking incident-specific factors into consideration. If the Commission were to pursue adding “promptly” to the rules then it would also need to acknowledge that “promptness” must be defined within the context of the event and within scope of the provider’s control. The word “prompt” itself can create confusion as it means both “done, performed, delivered, etc., *at once or without delay*” as well as “ready in action; *quick to act as occasion demands*.”¹¹ USTelecom members’ experience with restoration shows that promptness of restoration is inherently contextual (“quick to act as occasion demands”) as the measurable speed of restoration can be entirely dependent upon the gravity and scale of the situation. For example, a provider may depend on outside restoration capabilities, like power or physical access to facilities, before it can begin restoration. In this case, its ability to act “promptly” is dependent on external forces. Similarly, the proposal to require providers to “allocate all resources necessary to provision Emergency NS/EP services by the requested due date” can place unreasonable and unrealistic demands on a provider. Taken to its extreme, “allocating all resources” arguably would require a provider to summon its entire fleet of operations from all areas of its service territories to TSP restoration. At a minimum, the Commission would need to include a “reasonableness” or similar factor in any such language change.

C. The Commission Should Strive to Add Clarity and Parity for All TSP Services

The Petition highlights the need for the Commission to add clarity and parity in the distinctions between mandatory and voluntary TSP services in any rulemaking it chooses to pursue. The communications marketplace—and regulation thereof—has changed significantly over the past 30 years with new services available though it is not necessarily clear how different

¹¹ Prompt, Dictionary.com, <https://www.dictionary.com/browse/prompt?s=t> (last visited Aug. 30, 2019).

aspects of the communications market should be treated. It is not apparent that there is a functional difference between the “mandatory services” that USTelecom members would offer under the proposed rules and the voluntary services that a cable provider would offer (e.g., transport services); we seek clarity on these distinctions in any rulemaking with the ultimate goal of parity for like services. USTelecom agrees with the Petition that the distinctions between voluntary and mandatory sometimes cloud a provider’s ability to offer end-to-end TSP when the prime provider is a reseller of last mile services on one end, and the underlying wholesale provider is not a mandatory TSP participant.¹² Clarity around notification schemes and obligations in such a circumstance would be helpful to the prime providers, which generally cannot control the last mile facilities that they lease.

While parity and clarity are the goal, USTelecom is concerned with the Petition’s approach to ensuring voluntary TSP services are subject to all the same restrictions as mandatory services. The Petition states that “for providers who voluntarily offer TSP-like prioritized provisioning and restoration, the Commission should clarify that they must do so in accordance with the requirements of Appendix A.” This request risks blurring the line between the conditions affecting mandatory and voluntary services and is far more than a “clarification” because it would apply rigid new rules to services that previously were not subject to them and potentially deter service providers from voluntarily offering new innovative services.

D. The Commission Should Broadly Weigh How to Approach Questions of Confidentiality

The Petition seeks to protect confidentiality in light of providers’ offshoring of certain functions but it is not clear exactly how it proposes to “strengthen” these policies and

¹² Petition at 7.

procedures.¹³ All USTelecom members value the security and confidentiality of their data and go to great lengths to protect it via their cybersecurity practices, but there is no single starting baseline “to prevent and detect the unauthorized disclosure of TSP data.”¹⁴ Therefore, the proposal that “the rules should be strengthened” is a relative construct that is hard for a provider to implement, and potentially could add significant costs to TSP operations. It is also not clear that “offshoring” alone is inherently less secure than keeping operations onshore. Accordingly, if the Commission were to pursue this topic, it must proceed carefully given the potential implications of creating distinctions between onshore and offshore operations.

There are additional concerns related to confidentiality of TSP data beyond those raised by the Petition that the Commission should consider if it pursues a rulemaking. Specifically, USTelecom members periodically receive requests from governments beyond the FCC and DHS for TSP data, including state and local governments. The Petition notes that aggregated TSP data “if compromised, could present a national security risk.”¹⁵ While USTelecom members strive to partner with all levels of government, due to the federal nature of this information that has national security implications, USTelecom asks the Commission to use the opportunity to clarify that government requests for TSP data should be administered by the Commission and/or DHS; individual carriers should not be in the position of deciding how or when to reveal such information, beyond those federal parties even if the request is well-intentioned.

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 3.

III. CONCLUSION

The Petition tees up a number of issues that merit consideration as a refresh to aging TSP rules. Should the Commission pursue a rulemaking, USTelecom respectfully requests it to consider these comments as it enters the rulemaking process.

Respectfully submitted,

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